

1 DAVID R. EBERHART (S.B. #195474)
deberhart@omm.com
2 LUANN L. SIMMONS (S.B. #203526)
lsimmons@omm.com
3 O'MELVENY & MYERS LLP
Two Embarcadero Center, 28th Floor
4 San Francisco, California 94111-3823
Telephone: +1 415 984 8700
5 Facsimile: +1 415 984 8701

6 Attorneys for Defendant
APPLE INC.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11
12 ZOMM, INC.,

13 Plaintiff,

14 v.

15 APPLE INC.,

16 Defendant.

Case No. 4:18-cv-04969-HSG

**STIPULATION AND ~~PROPOSED~~
ORDER PERMITTING MOTION TO
DISMISS BRIEFS TO EXCEED PAGE
LIMITS**

Judge: Haywood S. Gilliam, Jr.

1 Pursuant to Civil L.R. 7-11 and 7-12, Plaintiff Zomm, Inc. ("Zomm") and Defendant
2 Apple Inc. ("Apple") (collectively "the Parties") hereby stipulate and request that the Parties be
3 permitted to file briefs regarding Apple's motion to dismiss in excess of the applicable page
4 limits.

5 WHEREAS Apple's response to Zomm's Amended Complaint is currently due on or
6 before December 3, 2018;

7 WHEREAS Apple intends to move under Federal Rule of Civil Procedure 12(b)(6) to
8 dismiss for failure to state a claim each of the three causes of action asserted in Zomm's
9 Amended Complaint, specifically the first cause of action for alleged patent infringement, the
10 second cause of action for alleged breach of contract, and the third cause of action for alleged
11 unfair competition under California common law;

12 WHEREAS Apple's motion will address several complex issues including patent subject
13 matter eligibility under 35 U.S.C. § 101, pleading requirements for both breach of contract and
14 unfair competition claims, and federal and state preemption and supersession of unfair
15 competition claims; and

16 WHEREAS the Parties agree that due to the complexity of the issues and number of
17 causes of action to be addressed by Apple's motion, the Parties should be permitted to exceed the
18 page limits for the opening and responsive briefs by ten pages and the reply brief by five pages.

19 It is hereby STIPULATED AND AGREED, by and between the Parties, subject to the
20 approval of the Court, as follows:

- 21 (1) Apple is permitted to file a brief in support of its motion to dismiss of not more
22 than 35 pages of text;
- 23 (2) Zomm is permitted to file a brief in opposition to Apple's motion to dismiss of not
24 more than 35 pages of text; and
- 25 (3) Apple is permitted to file a reply brief in support of its motion to dismiss of not
26 more than 20 pages of text.

1 IT IS SO STIPULATED.

2 Dated: November 6, 2018

KELLEY DRYE AND WARREN LLP

3
4 By: /s/ Michael J. Zinna

5 Michael J. Zinna
6 Attorneys for Plaintiff
ZOMM, INC.

7 Dated: November 6, 2018

O'MELVENY & MYERS LLP

8
9 By: /s/ Luann L. Simmons

10 Luann L. Simmons
11 Attorneys for Defendant
APPLE INC.

12 **CERTIFICATE OF SERVICE**

13 I certify that all counsel of record is being served on November 6, 2018, with a copy of
14 this document via the Court's CM/ECF system.

15
16 /s/ Luann L. Simmons

17 Luann L. Simmons

18 **FILER'S ATTESTATION**

19 Pursuant to Local Rule 5-1(i)(3), I hereby attest that the other signatory listed, on whose
20 behalf the filing is submitted, concurs in the filing's content and has authorized the filing.

21
22 /s/ Luann L. Simmons

23 Luann L. Simmons

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: November 7, 2018



am. Jr.
ric Court Judge